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No. 493

In the Supreme Court of the United States

October Term, 1957

AMERICAN BITUMULS & ASPHALT CO., ET AL.,
PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Customs and Patent Appeals

BRIEF FOR THE UNITED STATES IN OPPOSITION

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Customs Court (R. 15-41) is reported at 37 Cust. Ct. 58, 146 F. Supp. 703. The opinion of the United States Court of Customs and Patent Appeals (Pet. 13a-29a) is reported at 246 F. 2d 270.

JURISDICTION

The judgment of the United States Court of Customs and Patent Appeals was entered on June 25, 1957 (Pet. 29a-30a). The petition for a writ of certiorari was filed on September 23, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1256.

QUESTION PRESENTED

Whether the court below erred in adhering to its ruling in *United States* v. *Metropolitan Petroleum Corp.*, 42 C.C.P.A. (Customs) 38, certiorari denied, 348 U.S. 858, which held that, as the result of the termination of the proclamation carrying out the Mexican Trade Agreement (Proclamation No. 2901 of September 6, 1950), the tax rate on imported fuel oil automatically reverted to the rate which would have existed but for that terminated agreement, and that the prohibition of the Reciprocal Trade Agreements Act against proclamations increasing or decreasing by more than 50 per centum any rate of duty, however established, existing on January 1, 1945, does not apply to proclamations terminating a proclamation carrying out a Trade Agreement.

STATUTES, TRADE AGREEMENTS AND PROCLAMATIONS INVOLVED

The pertinent parts of the Reciprocal Trade Agreements Act and of the Trade Agreements and Proclamations involved are set forth in the Appendix, *infra*, pp. 17-23.

STATEMENT

1. *The background.* The factual and statutory background is virtually identical with that in *Metropolitan Petroleum Corp.* v. *United States*, No. 303, October Term, 1954, certiorari denied, 348 U.S. 858. Section 350 of the Tariff Act of 1930 added by the Reciprocal Trade Agreements Act of 1934, *infra*,

pp. 17-18,[1] authorizes the President to enter into trade agreements with foreign governments when he finds that "any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States and that the purpose[s] * * * [of the Act] will be promoted * * *" thereby.

Section 350(a)(2) (*infra*, pp. 17-18) empowers the President "[t]o proclaim such modifications of existing duties and other import restrictions * * * as are required or appropriate to carry out any [such] foreign-trade agreement * * *". As originally enacted in 1934, Section 350 provided that no proclamation shall be made, increasing or decreasing an existing rate[2] of duty by more than 50 per centum.[3] The Act of July 5, 1945, Stat. 410, *infra*, p. 19, amended that passage to read:

> No proclamation shall be made increasing or decreasing by more than 50 per centum any rate of duty, however established, existing on January 1, 1945 * * *.[4]

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[1] Section 350 was thoroughly revised in 1955 (*infra*, pp. 19-21). We shall refer to its text in its pre-1955 form.

[2] A rate established by proclamation carrying out a foreign trade agreement was not considered an "existing" rate. 39 Op. A.G. 42.

[3] We shall refer to this clause as the 50 per centum prohibition.

[4] The reason for this amendment was that, by 1945, trade agreements had lowered the tariff rates by 50 per centum with respect to nearly one half of all dutiable imports, and that the President had to be given additional powers to lower customs in exchange for further concessions to be

Paragraph (a) (2) further provides in its Generalization Clause that the modified duties proclaimed by the President apply not only to the country with which the trade agreement has been concluded, but to the imports from all other countries. The President, however, has the authority to suspend such concessions with respect to any country discriminating against American commerce. Pursuant to the terminal sentence of the paragraph, any proclamation carrying out a trade agreement may be terminated by the President at any time in whole or in part.

Fuel oil,[5] the commodity involved in this litigation, is not subject to a customs duty under the Tariff Act proper.[6] It is, however, subject to an import tax of ½ of one cent per gallon under the Internal Revenue Code.[7]

The first trade agreement which affected the import tax on fuel oil was the agreement with Venezuela, 54 Stat. (Pt. 2) 2375, T.D. 50015, 75 Treas. Dec. 166, 173, made effective as of December 16, 1939, by Proclamation dated November 16, 1939, 54 Stat. (Pt. 2)

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given to the United States. H. Rep. No. 594, 79th Cong., 1st Sess., pp. 8, 35, 36, S. Rep. No. 356, 79th Cong., 1st Sess. See also the statement of Rep. Doughton, explaining the bill on the floor of the House, 91 Cong. Rec. 4871.

[5] We shall use the term "fuel oil" as including crude petroleum and fuel oil derived from petroleum derivates.

[6] Tariff Act of 1930, Section 201, Par. 1733, 46 Stat. 590, 680, 19 U.S.C. 1201, Par. 1733.

[7] Cf. Secs. 3420, 3422 of the Internal Revenue Code of 1939, which was in effect at the time of the imports. The import tax on petroleum products is now covered by Section 4521 of the Internal Revenue Code of 1954.

2375, 2401. Under this agreement, the import tax on crude petroleum, topped crude petroleum, and fuel oil derived from petroleum was lowered to ¼ of one cent for a tariff quota amounting roughly to 5 per centum of the crude petroleum processed in the refineries of the continental United States during the preceding calendar year. Imports in excess of such quota were not entitled to this reduced rate; the tax on them, however, was not to exceed ½ of one cent per gallon, *i.e.*, the statutory rate (*infra*, p. 21).

In 1942, the United States entered into an agreement with Mexico (57 Stat. (Pt. 2) 833, 909, T.D. 50797, 78 Treas. Dec. 190, 204), carried into effect as of January 30, 1943, by the Presidential Proclamations of December 28 and 31, 1942 (57 Stat. (Pt. 2) 833, 909, T.D. 50797, 78 Treas. Dec. 199-206), pursuant to which the import tax on fuel oil was lowered to ¼ of one cent without any tariff quota restrictions (*infra*, p. 22). This tax rate became applicable to all foreign countries by virtue of the Generalization Clause (*supra*, p. 4). Consequently, while the Mexican Agreement was in effect, there was no occasion to apply the higher rates of the Venezuelan Agreement.[8]

[8] Under the General Agreement on Tariffs and Trade (GATT), 61 Stat. (Pt. 5) A11, A1346, T.D. 51802, 82 Treas. Dec. 305, the import tax on fuel oil derived from petroleum is ¼ of one cent per gallon, but not less than the tax rate on crude petroleum (*infra*, p. 22). As we have shown, the tax rate on crude petroleum was ¼ of one cent per gallon under the Mexican Agreement and ½ of one cent per gallon for over-quota imports under the Venezuelan Agreement.

In 1950, the Governments of the United States and Mexico agreed that the Mexican Agreement should come to an end on December 31, 1950. Part I(b)[9] of the Proclamation No. 2901 of September 6, 1950 terminated, as of the close of December 31, 1950, the Proclamations of December 28 and 31, 1942, which had carried the Mexican Agreement into effect. In view of the complicated interplay of the Venezuelan Agreement and the General Agreement on Tariffs and Trade (GATT),[10] Part IV of the Proclamation specified certain customs duties and tax rates which would be in effect beginning January 1, 1951. The Proclamation stated that the rates for over-quota crude petroleum and fuel oil derived from petroleum would be ½ of one cent per gallon and that this would "carry out" the Venezuelan Trade Agreement and GATT.

2. *The controversy concerning the effect of the termination of the Proclamation carrying out the Mexican Agreement. United States v. Metropolitan Petroleum Corp., 42 C.C.P.A. (Customs) 38, certiorari denied, 348 U.S. 858.* Beginning January 1, 1951, the customs officials assessed fuel oil imports in excess of the quota (*supra*, pp. 4-5) at the rate of ½ of one cent per gallon. The importers protested on the ground that Proclamation No. 2901 had exceeded the President's statutory authority by purporting to raise the tax rate from ¼ of one cent to

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[9] 64 Stat. (P. 2) A427, T.D. 52559, 85 Treas. Dec. 252, *infra*, pp. 22-23.

[10] Cf. fn. 8.

½ of one cent, i.e., by 100 per centum of the 1945 rate.[11]

After the rejection of their protests by the Collector of Customs (cf. R. 12-13), the importers took a test case, *Metropolitan Petroleum Corp.* and *Herbert B. Moller* to the courts. The Customs Court decided in favor of the importers (31 Cust. Ct. 71). The Court of Customs and Patent Appeals, however, reversed. 42 C.C.P.A. (Customs) 38. It held that a proclamation terminating a proclamation carrying out a trade agreement was not subject to the 50 per centum prohibition; that, as the result of the termination proclamation, the Venezuelan Agreement, which had been dormant during the life of the Mexican Agreement, was reinstated by operation of law; and, finally, that the language in Proclamation No. 2901 (Part IV) purporting to carry out the Venezuelan Agreement[12] was redundant and merely declaratory of what the law would have been without it. It consequently agreed with the Government that the proper import tax rate for over-quota fuel oil amounted to ½ of one cent per gallon. Judge Worley dissented on the ground that, in his opinion, the 50 per centum prohibition applied to every proclamation issued under the authority of the Reciprocal Trade Agreements Act (42 C.C.A.P. (Customs) 38,

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[11] This result, of course, is based upon the mathematical truism that a decrease from ½ cent to ¼ cent is a 50 per centum reduction, while the corresponding rise from ¼ cent to ½ cent is a 100 per centum increase.

[12] *Supra*, p. 6, and *infra*, p. 23.

47). This Court denied a petition for a writ of certiorari (348 U.S. 858).

In the following year, the Trade Agreements Extension Act of 1955 [13] extensively revised the original Reciprocal Trade Agreements Act. The revision spells out that the 50 per centum prohibition applies only to proclamations carrying out a trade agreement and that it has no bearing whatever on terminating proclamations. The pertinent committee reports state that this particular amendment of the Act "continues a provision of existing law; it has been moved to this separate paragraph solely for reasons of clarity." [14]

3. *The proceedings below.* Petitioner was among those who had imported fuel oil into the United States during the period between January 1, 1951, the termination date of the Mexican Agreement (*supra*, pp. 6-7), and October 11, 1952, when a supplemental agreement with Venezuela became effective (R. 3).[15] Its protests against the assessment of the import tax at the rate of ½ of one cent per gallon were denied and transferred to the Customs Court pursuant to Section 515 of the Tariff Act of 1930, 46 Stat. 734, 19 U.S.C. 1515. There, the case remained in abeyance pending the outcome of the *Metropolitan* case.

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[13] Section 3, 69 Stat. 162, *infra*, pp. 19-21.

[14] H. Rep. No. 50, 84th Cong., 1st Sess., p. 17; S. Rep. No. 232, 84th Cong., 1st Sess., p. 9.

[15] 3 U.S.T. 4195, 4228. Under this Agreement, fuel oil became subject to an import tax varying from ⅛ to ¼ of a cent per gallon depending on its density.

After that test case had been decided adversely to the importers, petitioner pressed his own protests still pending in the Customs Court.[16] That tribunal, although realizing that petitioner's case was "in all material aspects similar to" *Metropolitan* (R. 16-17), refused to be bound by the ruling of the Court of Customs and Patent Appeals, and decided that the proper import tax rate for fuel oil was 3/8 of a cent per gallon, *i.e.*, a rate 50 per centum higher than the one provided for in the Mexican Agreement (R. 15-41). Both parties appealed from the decision of the Customs Court. The Government sought review on the ground that the court should have found that the proper tax rate was ½ of one cent per gallon (R. 1-4), and petitioner (the importer) cross-appealed, claiming that the proper rate was ¼ of one cent (R. 5-7).

The Court of Customs and Patent Appeals reversed the decision of the Customs Court on the Government's appeal (Pet. 13a-30a). It emphasized that "[t]he ultimate issue to be decided here is identical with that presented to this court in 1954 and decided in *United States* v. *Metropolitan Petroleum Corp., et al.*, 42 C.C.P.A. (Customs) 38 * * *" and that it was "still of the view that the tax of ½ cent per gallon, held to be the proper rate in the *Metropolitan* case, is the only proper rate and we shall try to state our reasons in sufficiently clear English to avoid further misunderstanding" (Pet. 14a).

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[16] Petitioner's attorney in the Customs Court and in the Court of Customs and Patent Appeals, of counsel here, also represented the importer in *Metropolitan Petroleum Corporation.*

In particular, the court held that the 50 per centum prohibition did not apply to terminating proclamations, because it was not likely that Congress intended to prevent the return to the statutory rate after the termination of a trade agreement,[17] and because the considerations which justified restrictions upon the President's power to depart from the statutory rates did not apply to presidential action restoring those rates (Pet. 21a-22a). In addition, the court recognized that as early as 1947 the administrative interpretation of the statute had been that the 50 percentum prohibition did not apply to terminating proclamations, and that Congress repeatedly had amended the Act, fully aware of this interpretation, without disapproving it (Pet. 22a). The court also referred to the Trade Agreements Extension Act of 1955 which expressly limits the 50 per centum prohibition to carrying-out proclamations (*supra*, p. 8), and to its legislative history which clearly indicates that this amendment was intended to restate and clarify existing law (Pet. 22a). The court therefore held that Part I(b) of the Proclamation (*infra*, p. 23), terminating the proclamation carrying out the Mexican Agreement, had the effect of re-establishing the

[17] The court explained that, upon the termination of a trade agreement, the foreign country withdraws the concessions in consideration of which the United States has lowered its tariff rates. Hence, if, upon such termination, the United States could not revert to the statutory rate, it would have to continue a part of the concession without receiving anything in exchange. The court was unwilling to place "[s]uch an interpretation * * * on the statute if its language will support a more reasonable one" (Pet. 21a-22a).

tax rate existing prior to (or but for) the proclamation of that agreement, *i.e.*, ½ of one cent per gallon (Pet. 23a).

With respect to Part IV of the Proclamation, which purported to carry the Venezuelan Agreement into effect, the court held that it was either void or surplusage, and that, in any event, it could be severed from the rest of the Proclamation without invalidating it (Pet. 24a-26a). The court finally addressed itself to petitioner's contention, repeated here (Pet. 2, fn. 1), that in *Metropolitan* the court had addressed itself only to the trade agreement and not to the presidential proclamation issued in relation thereto, and that *Metropolitan* consequently had not settled the validity of the proclamation itself (Pet. 26a-27a). The court stated:

> Perhaps the opinion in the *Metropolitan* case presumed too much on the reader's powers of observation, so we would like to point out that it refers three times directly, and several times more by inference, to the 1939 proclamation carrying out the Venezuelan trade agreement. On the whole, we think it very plain that the Venezuelan agreement was in effect, and remained in effect, by virtue of an unrescinded proclamation.

Judge Worley, who had dissented in the *Metropolitan* case, concurred on the ground that the failure of Congress to object to the administrative interpretation of the act and to the decision in *Metropolitan* convinced him that the prior construction of the statute was consistent with the congressional purpose (Pet. 28a-29a).

ARGUMENT

1. When the questions raised by this petition were first presented, in 1954, in the *Metropolitan Petroleum Corp.* case, this Court concluded that they did not merit review. At that time, the Court of Customs and Patent Appeals was divided. That is no longer so. The dissenter in *Metropolitan Petroleum* agrees that the Government's interpretation of the Act conforms to the congressional purposes. Moreover, the Trade Agreements Extension Act of 1955 (*supra*, p. 8), passed since certiorari was denied in *Metropolitan Petroleum*, indicates that the ruling in that case, as well as the ruling below, is in full accord with the congressional understanding of the statute. Finally, the 1955 statute, by clarifying the wording of the statute, has precluded the possibility that this problem will arise again in the future.[18] At this juncture, there is no basis whatever for a claim of general importance.[19]

2. Moreover, the decision below is clearly correct.

a. The court below based its ruling that the 50 per

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[18] On the whole, these questions are of substantial importance only with respect to oil imports made between January 1, 1951 and October 11, 1952, *i.e.*, the period between the Proclamations terminating the Mexican Proclamation and the one carrying out the supplemental Venezuelan Agreement (*supra*, p. 8). *Metropolitan Petroleum* served as the test case for those imports and we cannot perceive the need for any further litigation on this score.

[19] The unique problems raised by the inartistic formulation of Proclamation No. 2901, of course, are of no general concern justifying review by this Court. They are not likely to recur (cf. Pet. 26a).

centum prohibition did not apply to terminating proclamations on three main grounds:

First, it reasoned that Congress could not have intended to compel the United States to continue to make customs concessions after the termination of a trade agreement for which it no longer receives a *quid pro quo* (*supra*, p. 10, and Pet. 21a).[20] This interpretation is eminently reasonable; coming from the tribunal which is peculiarly familiar with the body of laws governing customs, import taxes, and reciprocal trade agreements, it is entitled to high respect.

Second, the court pointed out that the administrative interpretation was that the 50 per centum prohibition did not apply to termination proclamations,[21] and that Congress had repeatedly extended and

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[20] If petitioner's claim that the 50 per centum prohibition applies to every proclamation issued under the Reciprocal Trade Agreements Act were correct, the President could not, even by way of retaliation, impose the statutory rates upon countries discriminating against American commerce (cf. p. 4, *supra*).

[21] For instances in which custom duties had been raised by more than 50 per centum as the result of terminating proclamations, see, *e.g.*, the Proclamation of February 22, 1947, T.D. 51634, 82 Treas. Dec. 59, terminating an agreement with Canada, as the result of which the duties on linen fire hose were raised from 10¢ per pound and 7½ per centum *ad valorem* to 19½¢ per pound and 15 per centum *ad valorem*, *i.e.*, by nearly 100 per centum. For other examples, see, *e.g.*, Proclamation No. 2865 of November 30, 1949 (64 Stat. (Pt. 2) A376) and Proclamation No. 2946 of October 4, 1951 (65 Stat. C39, C40).

amended the Reciprocal Trade Agreements Acts [22] with full knowledge of this interpretation [23] (Pet. 22a-23a). The court below properly concluded that in these circumstances the extensions and amendments constituted congressional approval and ratification of the administrative interpretation of the Act.[24]

Third, the court below correctly noted that the legislative history of the Trade Agreements Extension

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[22] Acts of September 26, 1949, 63 Stat. 698; June 16, 1951, 65 Stat. 72; August 7, 1953, 67 Stat. 472; July 1, 1954, 68 Stat. 360; June 21, 1955, 69 Stat. 162.

[23] H. Rep. No. 14, 82d Cong., 1st Sess., p. 14, referring to the Trade Agreements Extension Act of 1951 (*supra*, fn. 22), cites with approval the Proclamation of February 22, 1947 (increasing the import duties on linen fire hose by nearly 100 per centum (*supra*, fn. 21)), H. Rep. No. 19, 81st Cong., 1st Sess., p. 2, and 95 Cong. Rec. 997, referring to the Trade Agreements Extension Act of 1949 (*supra*, fn. 22), point out that Proclamation No. 2865 (*supra*, fn. 21) would raise custom duties by more than 50 per centum over the 1945 level. The Committee Report took the position that "such modifications would be within the existing authority" with respect to all countries except Cuba which has special preferential rights under the Treaty of December 22, 1902, 33 Stat. (Pt. II) 2136. See, also, Hearings before the House Ways and Means Committee, 83d Cong., 1st Sess., on H.R. 4294, p. 1960, referring to the Trade Agreements Extension Act of 1953, *supra*, fn. 22.

[24] *United States* v. *Allen-Bradley Company*, 352 U.S. 306, 308-311; *Corn Products Co.* v. *Commissioner*, 350 U.S. 46, 53; *Allen* v. *Grand Central Aircraft Co.*, 347 U.S. 535, 544-549; *Shapiro* v. *United States*, 335 U.S. 1, 6; *Commissioner* v. *Flowers*, 326 U.S. 465, 469; *Helvering* v. *Winmill*, 305 U.S. 79, 82-83; *Norwegian Nitrogen Co.* v. *United States*, 288 U.S. 294, 310-315; *Hecht* v. *Mailey*, 265 U.S. 144, 153; see also *Brooks* v. *Dewar*, 313 U.S. 354, 361; *Fleming* v. *Mohawk Co.*, 331 U.S. 111, 118-119; *Mitchell* v. *Covington Mills*, 229 F. 2d 506, 509 (C.A.D.C.), certiorari denied, 350 U.S. 1002.

Act of 1955 shows that Congress' understanding of prior law was in accord with the settled administrative interpretation.[25]

b. The court below was also correct in holding that the validity of the Proclamation as a whole was not affected by Part IV, which purported to "carry out" the Venezuela Agreement and GATT (*supra*, pp. 6-11). Even if a "carrying out" proclamation may not increase the custom rates by more than 50 per centum over the January 1, 1945 level, Part IV was not intended to do anything that was not already accomplished by Part I(b), which had terminated the Mexican Agreement.[26] It was therefore proper to treat Part IV as a nullity and to sever it from the rest of the Proclamation,[27] thereby giving effect to the plain purpose of the Executive without making a fortress of the dictionary.[28] Petitioner has not shown that it was

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[25] Cf. *United States* v. *Stafoff*, 260 U.S. 477, 480; *First National Bank* v. *Missouri*, 263 U.S. 640, 658-659; *Bailey* v. *Clark*, 21 Wall. 284, 288; *Stockdale* v. *Insurance Companies*, 20 Wall. 323, 331.

[26] We submit that Part IV was not designed to have a specific legal import, but rather that, in view of the complex interplay of the Venezuelan Agreement, of GATT, and of the Internal Revenue Code, it was intended to serve as a notice to the public, and as an instruction to the customs officials, advising them of the rate to which imported fuel oil would be subject after January 1, 1951. See *supra*, p. 6.

[27] See *Champlin Refining Co.* v. *Corporation Commission*, 286 U.S. 210, 235; *Willcox* v. *Consolidated Gas Co.*, 212 U.S. 19, 53; *Dorchy* v. *Kansas*, 264 U.S. 286, 290; *Lynch* v. *United States*, 292 U.S. 571, 586; *Poindexter* v. *Greenhow*, 114 U.S. 270, 304-305.

[28] *Keifer & Keifer* v. *R. F. C.*, 306 U.S. 381, 389, 391, fn. 4; *Johnson* v. *United States*, 163 Fed. 30, 32 (C.A. 1, per

prejudiced in any way by the drafting of the Proclamation.

CONCLUSION

For the above reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER 1957.

Holmes, Circuit Justice); *Cabell* v. *Markham*, 148 F. 2d 737, 739 (C.A. 2), affirmed, 326 U.S. 404.

APPENDIX

1. In 1951 Section 350 of the Tariff Act of 1930 (Section 1 of the Reciprocal Trade Agreements Act of June 12, 1934), 48 Stat. 943, as amended by the Acts of June 7, 1943, 57 Stat. 125, July 5, 1945, 59 Stat. 410 and September 26, 1949, 63 Stat. 698, 19 U. S. C. A. 1351 [48] provided in pertinent part:

> (a) For the purpose of expanding foreign markets for the products of the United States (as a means of assisting in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce) by regulating the admission of foreign goods into the United States in accordance with the characteristics and needs of various branches of American production so that foreign markets will be made available to those branches of American production which require and are capable of developing such outlets by affording corresponding market opportunities for foreign products in the United States, the President, whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States and that the purpose above declared will be promoted by the means hereinafter specified, is authorized from time to time—
>
> (1) To enter into foreign trade agreements with foreign governments or instrumentalities thereof; and
>
> (2) To proclaim such modifications of existing du ies and other import restriction, or such additional import restrictions, or such continuance, and for such minimum periods, of existing customs or excise treatment of any article cov-

[48] The text of 19 U. S. C. (1952 ed.) 1351 is incomplete due to a typographical error.

ered by foreign-trade agreements, as are required or appropriate to carry out any foreign-trade agreement that the President has entered into hereunder. No proclamation shall be made increasing or decreasing by more than 50 per centum any rate of duty, however established, existing on January 1, 1945 (even though temporarily suspended by Act of Congress), or transferring any article between the dutiable and free lists. The proclaimed duties and other import restrictions shall apply to articles the growth, produce, or manufacture of all foreign countries, whether imported directly, or indirectly: *Provided*, That the President may suspend the application to articles the growth, produce, or manufacture of any country because of its discriminatory treatment of American commerce or because of other acts (including the operations of international cartels) or policies which in his opinion tend to defeat the purposes set forth in this section; and the proclaimed duties and other import restrictions shall be in effect from and after such time as is specified in the proclamation. The President may at any time terminate any such proclamation in whole or in part.

(b) Nothing in this section shall be construed to prevent the application, with respect to rates of duty established under this section pursuant to agreements with countries other than Cuba, of the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, or to preclude giving effect to an exclusive agreement with Cuba concluded under this section, modifying the existing preferential customs treatment of any article the growth, produce, or manufacture of Cuba. Nothing in this Act shall be construed to preclude the application to any product of Cuba (including products preferentially free of duty) of a rate of duty not higher than the rate applicable to the

like products of other foreign countries (except the Philippines), whether or not the application of such rate involves any preferential customs treatment. No rate of duty on products of Cuba shall in any case be decreased by more than 50 per centum of the rate of duty, however established, existing on January 1, 1945 (even though temporarily suspended by Act of Congress).

2. The Act of July 5, 1945, 59 Stat. 410, provides in pertinent part:

> * * * the period during which the President is authorized to enter into foreign trade agreements under section 350 of the Tariff Act of 1930, as amended and extended, is hereby extended for a further period of three years from June 12, 1945.
>
> Section 2. (a) The second sentence of subsection (a) (2) of such section, as amended (U. S. C., 1940 edition, Supp. IV, title 19, sec. 1351 (a) (2)), is amended to read as follows:
> "No proclamation shall be made increasing or decreasing by more than 50 per centum any rate of duty, however established, existing on January 1, 1945 (even though temporarily suspended by Act of Congress), or transferring any article between the dutiable and free lists. * * *

3. Section 3 of the Trade Agreements Extension Act of 1955 (69 Stat. 162) amending Section 350 of the Tariff Act of 1930 provides in pertinent part:

> (a) (1) For the purpose of expanding foreign markets for the products of the United States (as a means of assisting in establishing and maintaining a better relationship among various branches of American agriculture, industry, mining, and commerce) by regulating the admission of foreign goods into the United States in accordance with the characteristics and needs of various branches of American production so that foreign markets will be made avail-

able to those branches of American production which require and are capable of developing such outlets by affording corresponding market opportunities for foreign products in the United States, the President, whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States and that the purpose above declared will be promoted by the means hereinafter specified, is authorized from time to time—

(A) To enter into foreign trade agreements with foreign governments or instrumentalities thereof: *Provided*, That the enactment of the Trade Agreements Extension Act of 1955 shall not be construed to determine or indicate the approval or disapproval by the Congress of the executive agreement known as the General Agreement on Tariffs and Trade.

(B) To proclaim such modifications of existing duties and other import restrictions, or such additional import restrictions, or such continuance, and for such minimum periods, of existing customs or excise treatment of any article covered by foreign trade agreements, as are required or appropriate to carry out any foreign trade agreement that the President has entered into hereunder.

(2) No proclamation pursuant to paragraph (1) (B) of this subsection shall be made—

(A) Increasing by more than 50 per centum any rate of duty existing on January 1, 1945.

* * * * *

(4) Subject to the provisions of section 5 of the Trade Agreements Extension Act of 1951 (19 U. S. C., sec. 1362), duties and other import restrictions proclaimed pursuant to this section shall apply to articles the growth, produce, or manufacture of all foreign countries, whether imported directly or indirectly: *Provided*, That the President shall, as soon as practicable, sus-

pend the application to articles the growth, produce, or manufacture of any country because of its discriminatory treatment of American commerce or because of other acts (including the operations of international cartels) or policies which in his opinion tend to defeat the purposes of this section.

(5) The President may at any time terminate, in whole or in part, any proclamation made pursuant to this section.

* * * * *

4. The Trade Agreement with Venezuela, 54 Stat. (Pt. 2) 2375, 2387, T. D. 50015, 75 Treas. Dec. 166, 173 provides in pertinent part:

SCHEDULE II

Internal Revenue Code Section	Description of article	Rate of import tax
3422	Crude petroleum, topped crude petroleum, and fuel oil derived from petroleum including fuel oil known as gas oil	¼c per gal.
	Provided, That such petroleum and fuel oil entered, or withdrawn from warehouse, for consumption in any calendar year in excess of 5 per centum of the total quantity of crude petroleum processed in refineries in continental United States during the preceding calendar year, as ascertained by the Secretary of the Interior of the United States shall not be entitled to a reduction in tax by virtue of this item, but the rate of import tax thereon shall not exceed	½c per gal.
	Provided further, That if this item becomes effective after the beginning of a calendar year the quantity of such petroleum and fuel oil which may be entered or withdrawn from warehouse for consumption at the reduced rate during the remainder of such calendar year shall be one-twelfth of the foregoing quantity multiplied by the number of months (treating any part of a month as a full month) during which this item shall be in effect during such calendar year.	

5. The Trade Agreement with Mexico, 57 Stat. (Pt. 2) 833, 898, 909, T. D. 50797, 78 Treas. Dec. 190, 204, provides in pertinent part:

SCHEDULE II

Internal Revenue Code Section	Description of article	Rate of import tax
3422	Crude petroleum, topped crude petroleum, and fuel oil derived from petroleum including fuel oil known as gas oil.....	¼c per gal.

6. The General Agreement on Tariffs and Trade, 61 Stat. (Pt. 5) A11, A1346, T. D. 51802, 82 Treas. Dec. 305, provides in pertinent part:

SCHEDULE XX PART I

Internal Revenue Code Section	Description of Products	Rate of import tax
3422	Topped crude petroleum, fuel oil derived from petroleum including fuel oil known as gas oil, and all liquid derivatives of crude petroleum (except lubricating oil and such derivatives specified hereinafter in any item 3422) ..... *Provided*, That in no event shall the rate of import tax applicable under section 3422, Internal Revenue Code, or any modification thereof, to topped crude petroleum or fuel oil derived from petroleum be less than the rate of such tax applicable to crude petroleum.	¼c per gal.

7. The Presidential Proclamation No. 2901 terminating the Trade Agreement with Mexico, 64 Stat. A427, T. D. 52559, 85 Treas. Dec. 252, 259, provides in pertinent part:

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution and the statutes, including the said section 350 of the Tariff Act of 1930, as amended, do proclaim as follows:

PART I

(a) * * *

(b) The said proclamations of December 28, and 31, 1942, relating to the said trade agreement with the United Mexican States, shall be terminated in whole as of the close of December 31, 1950.

* * * * *

PART IV

To the end that the said trade agreements specified in the first and twelfth recitals of this proclamation may be carried out, crude petroleum, topped crude petroleum, and fuel oil derived from petroleum, including fuel oil known as gas oil, entered, or withdrawn from warehouse, for consumption in any calendar year beginning with the calendar year 1951, in excess of an aggregate quantity of all such products equal to 5 per centum of the total quantity of crude petroleum processed in refineries in continental United States during the preceding calendar year, specified in the said item 3422 set forth in the thirteenth recital of this proclamation, shall be subject to import tax at the rate of ½ cent per gallon.

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